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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,189	01/20/2004	Kristoffer Hess	K8000201US1	7281
34236	7590	11/08/2005	EXAMINER	
VALENTINE A. COTTRILL SUITE 1020 50 QUEEN STREET NORTH KITCHENER, ON N2H6M2 CANADA			HOGE, GARY CHAPMAN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/759,189	Applicant(s) HESS ET AL	
	Examiner Gary C. Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 7-17, 29, 31, 38-41 and 46-60 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-42 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 18-22, 43 and 44 is/are rejected.
- 7) ☒ Claim(s) 2, 6, 23 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9 IDS's</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species I. in the reply filed on August 25, 2005 is acknowledged. The traversal is on the ground(s) that "the only difference" between Species I and Species II is "the curved diffusing layers." This is not found persuasive because the curved diffusing layer would be patentably distinct from a layer that is not curved. The same rationale applies to Applicant's other arguments.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7-17, 29, 31, 34-41 and 46-60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 25, 2005.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4, 18-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess (2002/0023376).

Hess discloses a flame simulating assembly comprising at least one light source **14**; a first screen **18** positioned in a first path of light from the at least one light source, the first screen being adapted to receive light from the at least one light source to form an image of flames transmittable through the first screen; and a second screen **38** positioned in a second path of light from the at least one light source, the second screen being adapted to receive light from the at least one light source to form an image of flames transmittable through the second screen.

Regarding claims 19 and 20, flicker element **40** includes a plurality of flicker elements **42**. This includes a first element and a second element.

5. Claims 1, 3-5, 18-22, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Schroeter et al. (2004/0060213).

Schroeter discloses a flame simulating assembly comprising at least one light source **10**; a first screen **12** positioned in a first path of light from the at least one light source, the first screen being adapted to receive light from the at least one light source to form an image of flames transmittable through the first screen; and a second screen **13** positioned in a second path of light from the at least one light source, the second screen being adapted to receive light from the at least one light source to form an image of flames transmittable through the second screen.

Regarding claims 3, 5 and 21, see element **28**.

Regarding claims 19 and 20, flicker element **11** includes a plurality of flicker elements **21**. This includes a first element and a second element.

*Allowable Subject Matter*

6. Claims 2, 6, 23, 25-38, 30, 32, 34, 35, 37 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 24-42 are allowed, claims 34-41 being hereby rejoined as depending from an allowable generic claim.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

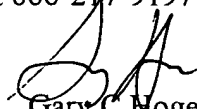
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary C Moge  
Primary Examiner  
Art Unit 3611

gch